No. (3) 97-259

Supreme Court, U.S.
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In The
Supreme Court of the United States

October Term 1996

In re: Ahmad Ali Massoud Ansari,
Debtor,

AHMAD ALI MASSOUD ANSARI,
Petitioner,

v.

REZA PAHLAVI,
MEDINA DEVELOPMENT COMPANY,
Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

REPLY TO BRIEF IN OPPOSITION

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Introduction

Ansari, by counsel, submits this Reply in order to correct a number of misstatements set forth in the Respondents' Brief in Opposition. Ansari argues that the Respondents'' inability to provide support in the record for many of their factual assertions demonstrates the lack of "actual litigation" over the issues essential to a finding of nondischargeability, and, in turn, demonstrates the lower courts' error in ruling in the Respondents' favor under collateral estoppel.

Statement of the Case

1. The Respondents state that

> When Pahlavi persisted in his demands for an accounting, Ansari retaliated by burying what remained of Pahlavi's property under millions of dollars of liens, and sought to intimidate Pahlavi with threats to involve hostile foreign powers.

Brief in Opposition at 4-5.

These assertions are incorrect, as follows. First, Respondent Pahlavi himself testified that he never sought an accounting prior to the commencement of the Fairfax Court litigation. J.A. at 1002. Second, the referenced liens encumbering Respondent Pahlavi's residence were created with the knowledge of not only Respondent Pahlavi but also his attorneys. J.A. at 949-50, 973, 989, 991. Finally, Ansari denies that he ever sought to intimidate Respondent Pahlavi. Rather, he merely pointed out that because of the parties' dangerous and covert political operation to overthrow the Islamic Republic of Iran, involving the lives of hundreds, it

would be preferable to resolve their differences in private, such as through a binding arbitration.

2. The Respondents state that

> When this conflict boiled over into litigation in the Circuit Court of Fairfax County, Virginia, Ansari escalated his tactics into a bitter, running warfare that embroiled the parties in three years of grueling litigation, amassing a record of 20 hearings before the Circuit Court of fairfax County, Virginia, and 29 hearings before the Commissioner appointed to take Ansari's accounting. The transcriptsof these hearing exceed 6,500 pages.

Brief in Opposition at 5.

The Respondents imply that Ansari was responsible for the aggressive litigation tactics and numerous court hearings. On the contrary, the Respondents were responsible for this strategy. They issued numerous subpoenae and discovery requests, and then filed numerous discovery motions in order to hold Ansari responsible for failure to comply with such requests, when they knew that it was impossible for Ansari to comply, because (a) Respondent Pahlavi had instituted criminal proceedings against Ansari in Switzerland, thereby preventing Ansari from obtaining account records frozen by the Swiss, J.A. at 356-57 (Commissioner in Chancery's Fourth Report, stating that it was not Ansari's fault that pertinent records could not be furnished), J.A. at 493 (Commissioner in Chancery's finding that "[Respondent Pahlavi's] actions made it

difficult, to say the least, for Mr. Ansari to obtain and furnish copies of the records relating to those [Swiss] accounts."); (b) the secretive nature of the parties' political operation necessitated that Respondent Pahlavi's's assets be spread around the world, as the Islamic Republic of Iran had issued a death warrant for Respondent Pahlavi and resolved to seize his assets, J.A. at 733-34, 740; and (c) Respondent Pahlavi had instructed Ansari to destroy records because of the security risks of keeping them. J. A. at 321, 338, 523.

3. Respondents state that

> Ansari completely fails to show how he accounted for the funds entrusted to him, or how he was denied an opportunity to do so. Ansari's defalcation was plainly made out and the judgement is dischargeable.

Brief in Opposition at 11.

Ansari was denied an opportunity to account for at least five reasons. First, there could not be a meaningful accounting before the Commissioner in Chancery, because the Fairfax Court had already ordered that all of Respondents'' allegations were true and all of Ansari's defenses were stricken. Second, as set forth above, the Commissioner in Chancery found that it was not Ansari's fault, but rather Respondent Pahlavi's actions, that pertinent records could not be furnished. Third, notwithstanding that it was Respondent Pahlavi's actions that made it difficult for Ansari to account, Ansari was the party who was prejudiced:

> [N]o credit can be given for a substantial amount which probably was appropriately disbursed because proof is not available.

J.A. at 491 (Report of Commissioner in Chancery) . Fourth. the parties' covert political operation necessitated the minimizing of written records.

Finally, the accounting was defective. The Commissioner in Chancery was to conduct an accounting for the parties' transactions between 1981 and 1989. With respect to 1981 the Commissioner in Chancery

> prepared an accounting. . . . . showing all receipts and disbursements and showing exactly what was on hand at the end of that year.

J.A. at 493. Eventually, the Commissioner in Chancery "was able to name nearly all of the recipients of the funds disbursed." J.A. at 494, and he concluded "that there was no unauthorized diversion of funds in 1981 and no damages were suffered by Pahlavi at that time." Id. However, the Commissioner in Chancery did not conduct such a detailed accounting with respect to 1982 through 1989, stating that "Time will not permit making similar use of the material relating to all the subsequent years." Id. Without carefully accounting for funds in 1982 through 1989, the Commissioner in Chancery found anyway, and the Fairfax Court affirmed, that Ansari had made unauthorized disbursements of funds belonging to Respondent Pahlavi.

4. Similarly, Ansari had no meaningful opportunity to defend himself at the Punitives hearing. The only issue at the Punitives hearing was whether Ansari acted with "misconduct or actual malice or such recklessness or negligence as to evince a conscious disregard of the rights of others." But in light of the default judgement, all of the Respondents' allegations were assumed to be true, and therefore Ansari could not credibly testify that he had not done what he was accused of. When one is innocent, he

cannot credibly say that he is guilty but not malicious. As a result of the default judgment, the finding of the requisite bad state of mind was inherently a foregone conclusion.

5. Notwithstanding the Respondents' repeated and dramatic disparagements of Ansari's character and mischaracterizations of this litigation's history, Ansari merely wants his day in court on the merits of the allegations that have been made against him. If true, the facts alleged against Ansari are heinous. However, the facts are false, and a gross miscarriage of justice will result if he is not permitted to defend himself on the merits.

Conclusion

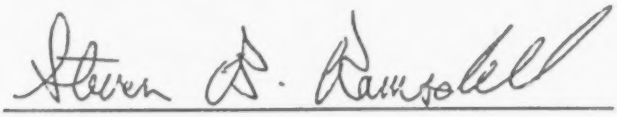
The numerous factual inaccuracies set out in the Respondents' Brief in Opposition demonstrate the extreme prejudice to Ansari of having this judgment declared nondischargeable on the ground of collateral estoppel, where that underlying judgment was a default judgment. The Respondents' failure to properly support various of their factual assertions demonstrates that the factual background of this case is ambiguous and was never finally determined, and further demonstrates that there was no "actual litigation" on issues pertinent to the later dischargeability proceeding in the bankruptcy court. In the face of the huge amount in controversy, the factual disputes suggest, and due process demands, that this petition be granted so that Ansari can seek to obtain a remand to the bankruptcy court for a trial on the merits where the parties' dispute can be adjudicated after both sides have had a full and fair opportunity to present their positions.

The Commissioner in Chancery made a detailed accounting for only 1981, which resulted in a determination of no liability by Ansari. The accounting for the subsequent years 1982 through 1989 was incomplete, ostensibly because

the Commissioner in Chancery lacked the time. J.A. at 494. This subsequent accounting by the Commissioner in Chancery was therefore defective and therefore insufficient to constitute "actual litigation" over issues "essential to" a finding of nondischargeablility.

WHEREFORE, Ansari prays that this Court, upon consideration of Ansari's Petition for Writ of Certiorari and Reply Brief in Opposition, issue a writ of certiorari to review the Opinion and Judgement of the Court of Appeals for the Fourth Circuit.

Respectfully submitted,



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